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Letter dated 28 October 2009 from the Secretary-General addressed to the President of the Security Council

I wish to inform the members of the Security Council that I have decided to establish an international Commission of Inquiry to investigate the many killings, injuries and alleged gross human rights violations that took place in the Republic of Guinea on 28 September 2009, and in response to widespread appeals from Member States, including the Government of Guinea, members of the Economic Community of West African States (ECOWAS), the African Union (AU) and the Security Council.

On 16 October 2009, I dispatched an exploratory mission to Guinea and the subregion, led by Haile Menkerios, Assistant Secretary-General for Political Affairs, to discuss with the Government and regional actors the modalities for establishing an international Commission of Inquiry and to assess the willingness of the Government to cooperate with the Commission. The mission was well received, and AU and ECOWAS have both pledged to support the work of the Commission. The Government of Guinea has indicated in writing its willingness to cooperate with and facilitate the work of the Commission.

The Commission will be mandated to establish the facts and circumstances of the events of 28 September 2009 and the related events in their immediate aftermath, qualify the crimes perpetrated, determine responsibilities and, where possible, identify those responsible. It will also make recommendations, in particular, on accountability measures. I intend to deploy the Commission as soon as possible and have asked that it submit a report to me within 60 days from the start of its activities.

In the conduct of its inquiry, the Commission shall enjoy the full cooperation of the Government of Guinea. It shall be provided with the necessary facilities to enable it to discharge its mandate and, in particular, shall be guaranteed freedom of movement throughout the territory, freedom of access to all sources of information, both testimonial and physical evidence, and all documentary material. The Government of Guinea is expected to provide appropriate security arrangements for the personnel and documents of the Commission, and guarantee protection of victims and witnesses and all those in contact with the Commission in connection with the inquiry. The work of the Commission will be financed through existing resources. The terms of reference for the Commission are herewith attached (see annex).

I should be grateful if you would bring the present letter and its annex to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex to the letter dated 28 October 2009 from the Secretary-General addressed to the President of the Security Council

Terms of reference for the Commission of Inquiry for Guinea

1. In response to an international appeal from both within and outside the Republic of Guinea, in particular the call of the Economic Community of West African States (ECOWAS) and the International Contact Group on Guinea, for the Secretary-General to establish an international commission of inquiry to investigate the events of 28 September 2009, in which a large number of people were killed, injured and sexually assaulted during a political rally, after consultations with representatives of the regional organizations ECOWAS and the African Union (AU), the Government of Guinea and opposition groups, and with the support of members of the Security Council, the Secretary-General has decided to establish a Commission of Inquiry for Guinea with the following terms of reference.

2. The Commission of Inquiry shall investigate the facts and circumstances of the events of 28 September 2009 and related events in their immediate aftermath. To that end, it shall:

(a) Establish the facts;

(b) Qualify the crimes;

(c) Determine responsibilities and, where possible, identify those responsible;

(d) Make recommendations, including, in particular, on accountability measures.

3. In the conduct of its inquiry, the Commission shall enjoy the full cooperation of the Government of Guinea. The Government shall comply with requests of the Commission for assistance in collecting the required information and testimony. It shall, in particular, guarantee to the Commission:

(a) Freedom of movement throughout the territory of Guinea;

(b) Freedom of access to all places and establishments, including prisons and detention centres, of relevance to the work of the Commission;

(c) Freedom of access to all sources of information, including documentary material and physical evidence, freedom to interview representatives of governmental and military authorities, community leaders, civil society and, in principle, any individual whose testimony is considered necessary for the fulfilment of its mandate;

(d) Appropriate security arrangements for the personnel, documents, premises and other property of the Commission;

(e) Protection of all those who are in contact with the Commission in connection with the inquiry; no such person shall, as a result of such appearance or information, suffer harassment, threats of intimidation, ill-treatment, reprisals or any other prejudicial treatment;

(f) Privileges, immunities and facilities necessary for the independent conduct of the inquiry. In particular, members of the Commission shall enjoy the privileges and immunities accorded to experts on missions under article VI of the

1946 Convention on the Privileges and Immunities of the United Nations, and officials under articles V and VII of the Convention.

4. The Commission may approach third States with a request for cooperation in the collection of material or information relevant to the case.

5. The Commission shall be composed of three members having a reputation for probity and impartiality. In the overall composition of the Commission, there will be the required expertise in human rights, international law, including international criminal law, and experience in investigating human rights violations, including sexual violence. Members of the Commission shall be appointed by the Secretary-General, in consultation with ECOWAS and AU. The Commission shall be assisted by the necessary staff, including administrative, security and technical staff.

6. The Commission shall submit its report to the Secretary-General within two months from the start of its activities. The Secretary-General will share the report with ECOWAS, AU and the Government of Guinea.